

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 36 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No
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MEMON SALEMAHMAD AHMED

Versus

UNION OF INDIA

Appearance:

MR DD VYAS for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 30/03/98

ORAL JUDGEMENT

This is plaintiffs Second Appeal.

The plaintiffs in the suit before the Trial Court challenged the order dated 30.10.1953 passed by Assistant Custodian, Evacuee Properties being in contravention of the provisions of section 7 of the Adminisration of Evacuee Properties Act, 1950 being null and void.

The main contention was that no notice under section 7 of the aforesaid Act was served upon the plaintiffs, hence exparte order of the Assistant Custodian is null and void in asmuch as no opportunity of hearing was afforded to the plaintiffs-appellants. It was also pleaded that under trust-deed the plaintiffs

were the owners of the disputed properties on the relevant date when the impugned order was passed by the Assistant Custodian, Evacuee Properties. Hence, also the said property could not be declared to be evacuee property.

The suit was resisted on several grounds. Plea of limitation was also raised to the effect that the suit is barred by limitation. Another plea was that the plaintiffs were not owners of the property when the impugned order was passed and that the name of the father of the plaintiffs was recorded and notice under section 7 of the Evacuee Property Act was served upon the plaintiffs father but he did not turn up to file any objection. Hence, even exparte order cannot be assailed inasmuch as there is no jurisdictional error in the impugned order.

Three substantial questions of law were formulated in this Appeal.

Both the Courts below through concurrent finding dismissed the suit of the appellant as well as the First Appeal filed by him.

The first substantial question of law is whether the order dated 30.10.1953 passed by Assistant Custodian, Evacuee Properties, Porbandar is null and void being in contravention of the provisions of Section 7 of the Administration of Evacuee Properties Act, 1950.

The second substantial question is whether the lower Courts have erred in coming to the conclusion that the suit is barred by limitation.

The third question which relates to plaintiffs share is no substantial question of law.

Heard learned Counsel for the Appellants and the respondents and also gone through the judgments of the two Courts below.

Coming to the second substantial question regarding bar of limitation I find that the view taken by the two Courts below is not erroneous. The order exhibit 38 dated 30.10.1953 is under challenge. The suit was filed on 28.12.1965. It was thus apparently a suit not instituted within three years from the date of accrual of cause of action. The cause of action cannot be said to have arisen on 25.1.1963 when judgment was delivered in favour of the plaintiffs-appellants. That is totally

irrelevant consideration. Consequently no error of law was committed by the two Courts below in giving concurrent finding that the suit was barred by limitation. I, therefore, do not find any merit in the second substantial question of law.

If the suit was time barred, the two Courts below could not have decreed the suit eventhough it was found that the impugned order was invalid. Consequently exercise of entering into first substantial question is now futile exercise and mere formality. However, this question was framed at the time of admission, hence it is proposed to be disposed of with the aid of the record and the judgments of the two Courts below.

Notice under section 7 of the Act was required to be given to the person in whose name the property proposed to be declared as evacuee property was recorded in the relevant records. There is cogent and reliable evidence that the property was entered in the name of plaintiffs' father and not in the name of the plaintiff. Consequently the plaintiffs father alone was entitled to the notice under section 7 of the Act. The case of the respondent was that such notice was issued to the plaintiff's father but he did not appear to file any objection. During trial attempt was made to summon the record from the Evacuee Department to ascertain whether any notice under section 7 was served upon the plaintiffs father or not. However, the record was not produced by the department and the department never claimed any privilege. However, there is presumption that Official Acts are done regularly in accordance with rules, law, procedure hence abrupt finding cannot be given at this stage that no notice was given to the plaintiffs. Moreover this point could be challenged by the father of the plaintiff against whom the order was passed and not by the plaintiffs. Since the property was not recorded in the name of the appellants-plaintiffs they were not entitled to receive any notice under section 7. They made attempt by filing secondary evidence of some trust deed that property was recorded as trust property and the appellants were the trustees. However, the lower Appellate Court as well as the Trial Court have rightly ignored from considering such secondary evidence because of non production of primary evidence viz. original trust deed and there is no evidence on record that the original trust deed was lost, destroyed or not available. Consequently in the absence of proof of loss or destruction of original document, secondary evidence of the trust deed could not be admitted and it was rightly refused by the two Courts below. If that is so the

plaintiffs were not entitled to receive any notice under section 7 of the Act.

In view of the aforesaid discussions the impugned order dated 30.10.1993 cannot be held to be null, void or in contravention of section 7 of the Administration of Evacuee Properties Act, 1950. The first substantial question is answered in negative.

In view of the aforesaid discussions I do not find any merit in the appeal. The same is hereby dismissed. Parties shall bear their own costs.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt